92-675

Supreme Court, U.S.
FILED
SEP 8 1992
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NO_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 199_

JAMES D. HARMAN, Petitioner

V.

ROGER WETZEL, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

James D. Harman
RD#1, Box 46-B
Sacramento, Pa. 17968
(717) 682-9693

QUESTIONS PRESENTED FOR REVIEW

1. Is the ruling of the lower court in conflict with the Constitution of the United States, that guarantees every citizen a right to trial?
2. Can lower courts deny a citizen his due process rights guaranteed by the constitution, by circumventing existing rules and regulations.
3. Do the merits of the case warrent dismissal of the case and call for a reversal of the lower courts decisions?
4. Did the failure of the prothonotary of the lower court to transfer the case to the proper court result in denying the appellant his due process rights, and thereby invalidate Constitutional Laws?
5. Did the lower courts discriminate against the appellant by failing to advise him of his rights as guaranteed by the Constitution, and thereby invalidating Constitutional Laws?
6. Is a state statute in direct conflict with Congretional laws and regulations?
7. Was appellant denied equal protection under the law, when other cases are transfered.

SUBSTANTIALITY OF FEDERAL QUESTION

This appeal presents important and substantial questions, as hereinafter described in that if the lower courts decision is upheld, a dangerous precedent will be set that will allow lower courts to circumvent Constitutional Rights of all citizens , and arbitrary discrimination to occur because an appellant tries to secure these constitutional rights as a Pro Se appellant.

PARTIES TO THE PROCEEDINGS

Appellants; James D. Harman

United States

Appellee Roger Wetzel

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TABLE OF AUTHORITIES

Pa. Sewage Facilities Act 1966 as ammended

Pa. Rules of Appelate Procedure #751

5th & 14 Constitutional Ammendment

25 Pa. Code 72.22(a), 35 Ps 7507

28 U.S.C. 1257

28 USC 2403 (a)

JURISDICTION

This courts jurisdiction is predicated on Article 111, Section 1 of the United States Constitution, as well as 28 U. S. C. § 1257.

This case involves a violation of the plaintiffs 5th, and 14th Constitutional amdendment rights, along with violations of both state and federal statutes.

The Supreme court of Pennsylvania issued their order that upheld the lower courts decision on June 9, 1992. The appellant then appealed to the U. S. District Court to review the case, and this notice of appeal was denied on July 14, 1992. A timely appeal for certiorari to the U. S. Supreme Court is now being filed on September 7, 1992.

The decision of the State Court directly affects the Constitutionality of an act of Congress, therefore affecting the public interest in denying due process as allowed by the Constitution. Section 28 U. S. C. ¶ 2403 (a) is applicable and the U. S should be a party.

REGULATIONS AND STATUTES

1. Pennsylvania Rules of Appellate Procedure 751 .
" an appeal----which is brought before a court that does not have jurisdiction, the court shall not quash such appeal, but shall transfer the record thereof to the proper court of this commonwealth".

2. 5th Ammendment to the United States Constitution "grants all citizens of the u. s. due process under the law"

3. 14th Ammendment to the Unites States Constitution .
"No persons shall be denied equal protection under the law"

4. Pa. Sewage Facilities Act 1966 As ammended.
"Regulations governing construction of holding tanks"
"Steel septic tanks shall be of the following construction-----."

STATEMENT OF THE CASE

This is a case of a Sewage Enforcement officer Roger Wetzel, for the township of Hubley in Schuylkill County, Pa, issuing a citation to the appellant for a summary offence that carries a maximum allowable fine of three hundred dollars. This citation was issued July 26, 1990 exhibit #1. The Officer resigned his position a few days later, and tried to vacate the citation. The township solicitor James Diehl, refused to allow it for some unknown reason.

A brief hearing was held before a District Justice who is elected, and who has no knowledge of law. This District Justice failed to advise the appellant of his rights and where to appeal his decision. As a result the appeal was filed in the County Prothonotarys office, even though the filing fee in this office was more than in the clerk of courts office, proving it was not an intentional mistake. Local rules call for anything mistakenly filed be immediately forwarded to the proper court.

The local District Justice failed to keep any records of the case, and failed to allow the appellant to question all the witnesses. When Mr. Wetzel who issued the citation was asked at a related hearing if he did bear false witness against the appellant his answer which is on record was "yes". The Schuylkill County Court of Common Pleas refused the appeal without allowing the defendant to present evidence, or without reviewing the merits of the case. The appellant then appealed to the Superior court of Pennsylvania, claiming he was denied his due process rights by not having a trial on the alleged citation. The fact that this case was not transfered to the approprate court, and thereby discriminating against the appellant was also presented. The Superior Court of Pennsylvaina transfered the case to the Commonwealth Court that affir med the lower courts order on January 9, 1992, without reviewing any of the merits of the case. The appellant then appealed to the Supreme Court of Pennsylvaina that refused his petition on June 9, 1992.

ARGUMENT

This is a case that cries out for justice. The appellant has spent a great deal more than the small fine attached to the summary violation. The filing fee for this court alone at present is three hundred dollars.

If this court rules against the appellant a precedent will be set where individuals assigned to enforce a law will ignore sections of that law and enforce their own, thinking because the average person is ignorant of it, they will not know the differance.

Pennsylvania Sewage Law allows several different types of tanks to be installed, ranging from fiberglass, concrete, steel, and even experimental ones. Mr. Wetzel was only allowing concrete ones, and refusing all the others. When he found out the appellant was using a steel one, he issued the citation that is presently before this court. Upon resigning his position, Wetzel tried tried to withdraw the citation, in itself proof of his actions.

The township solicitor, for unknown reasons not only refused to allow the citation to be withdrawn, but ordered the following sewage officer to issue more citations , identical to the first one. When this township solicitor took the stand to defend his actions, he lied under oath before a Judge for the commonwealth of Pennsylvania. The solicitor stated that there was never any building on the site where the septic system was. An aerial photograph taken by the U. S. Army Corp of Engineers, and submitted into evidence prove he was lying. The Judge dismissed these citations that were identical to the initial one that is presently before this honorable court.

Not only do the merits of this case cry out for dismissal of it, but also the fact that the appellant was denied his due process rights as guaranteed by the Constitution of the United States to every citizen mandate that a dismissal is in order to insure justice, and prevent a future Law enforcement officer from enforcing his own brand of laws.

By failing to transfer the case to the proper court, the Court of Common Pleas of Schuylkill County denied the appellant his rights as guaranteed under the constitution of the U. S. All proceedings that followed are then moot.

CONCLUSION:

This case presents substantial Federal questions which require plenary consideration with briefs on the merits and oral argument for their resolution. Precedents could be set that would invalidate laws mandated by congress.

It is therefore humbly prayed that this honorable court review the merits of the case and reverse the lower courts decisions.

Respectfully Submitted

James D. Harman

Mr. James D. Harman
RD#1,Box 46-B
Sacramento, Pa. 17968
(717)682-9693

September 7, 1992

Comonwealth of Pennsylvania
SUMMONS
(non- traffic)

CITATION
56419

Defendant ;

James D. Harman
RD#1,Box 304 A
Lykens, Pa. 17804 Dauphin County, Pa..

Offense;

Installation of unaproved and non-permi tted sewage syatem, installation of a sewage system not in compliance with Sewage Facilities Act.

Nature of offense:

Defendant is in violation of the assembly sections 7-13 under the Act of January 24, 1966. P. L. 1535 as amended (35 P. S. Sect. 750.7 & 750. 13 & the regulations set forth in 25 Pa. Code 73.11(c) & Pa Code 72.22(a) in that a sewage disposal system placed in the ground without first obtaining a permit and sewage system is installed in a non approved manner.

Place:

Honeymoon Trail, Hubley TWP. Schuylkill County,

Violation:

Pa Sewage Facilities Act

Fine $300.

Madistrate District No. 21-3-04

Earl Matz, Jr.

19 North Pine St, Tremont, Pa.

Date issued 7/26/90

Roger Wetzel SEO # 00397
P.O. Box 277
Valley View, Pa. 17983

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

June 11, 1992

James D. Harman (pro Se)
RD#1,Box 46-B
Sacramento, Pa 17968

Re: James D. Harman
V Roger Wetzel

No. 0084 M.D. Allocatur 1992

Dear petitioner;

This is to advise that the following order has been endorsed on the petiton for Allowance of Appeal in the above captioned matter :

06/09/92
Petiton denied
Per Curiam

/Shirley J Phipps

Office of the Prothonotary
Supreme Court of Penna.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Harman,

Appellant

V.

Rkoger Wetzel,

Appellee

No. 944 C.D. 1991

ORDER

AND NOW this 9th day of January 1992, the amended order of the Court of Common Pleas of Schuylkill County dated D ecember 13, 1990 is affirmed.

S/Doris A Smith

Doris A Smith,
Judge

COURT OF COMMON PLEAS OF SCHUYHLILL County

CIVIL ACTION - LAW

Roger Wetzel,
Plaintiff

VS

James D. Harman
Defendant

No. S-1735-1990

James P. Diehl, Esq for Plaintiff
James D. Harman, Pro Se

AMENDED ORDER OF COURT

Stine, J.

AND NOW, this 13th day of December, 1990, upon review of the record papers including defendants failure to comply with SCh. R.C. P. 1028 (h), and upon consideration of the Preliminary Objections of the plaintiff in the nature of a demurrer/motion to quash appeal and his supporting brief, it appearing that the subject proceedings from which defendant attempts to appeal was a summary trial, it is hereby Ordered that the plaintiffs said Preliminary Objections are Sustained and the defendants appeal is dismissed for lack of conformity to P. R. Crim. P. 86(g).

B h the Court S/Stine J.